

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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5 In re:) Civil 05-MD-1708 (DWF/AJB)
6)
7 GUIDANT CORPORATION) STATUS CONFERENCE
8 IMPLANTABLE DEFIBRILLATOR)
9 PRODUCTS LIABILITY)
LITIGATION,)

10 This Document Relates)
11 To All Actions) 9:30 o'clock, a.m.
12) April 19, 2006
13) Minneapolis, Minnesota
14 -----

15 BEFORE THE HONORABLE JUDGE DONOVAN W. FRANK AND
16 THE HONORABLE MAGISTRATE JUDGE ARTHUR J. BOYLAN
17 UNITED STATES DISTRICT COURT JUDGE AND MAGISTRATE JUDGE
18 CIVIL STATUS CONFERENCE PROCEEDINGS
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1 (In open court.)

2 THE HONORABLE JUDGE FRANK: You may be
3 seated. Thank you.

4 I apologize for the late start. Before we
5 came into the courtroom, Judge Boylan and I discussed
6 the dates, so before we hopefully receive a summary from
7 both Plaintiffs and Defendant on the status of the case,
8 or cases, let me suggest a couple of dates, and maybe a
9 couple of other -- not really announcements, but
10 observations.

11 We have been having, as most of you know --
12 and we try to put them up on the website in between the
13 conferences, like this one -- we have a telephone
14 conference that is usually an hour in length. They have
15 been, except for the first one. We would suggest -- we
16 have been trying to do those, realizing some people are
17 up rather early because of the time zone you may be in,
18 Tuesday, May 2nd from 8:00 to 9:00 in the morning, how
19 would that complicate lead counsel's life?

20 MR. ZIMMERMAN: I can't do that one, Your
21 Honor. I am in a status conference, but there are
22 plenty people on my side that can handle it. So, I
23 think if that date works for the Defense, that would be
24 fine.

25 THE HONORABLE JUDGE FRANK: Mr. Pratt or Mr.

1 Price?

2 MR. PRATT: May 2nd?

3 THE HONORABLE JUDGE FRANK: Yeah, at 8:00 or
4 9:00 in the morning, Central Standard Time. That would
5 be the telephone conference.

6 MR. PRATT: Yes, Your Honor, we will work
7 that out. If that is good with you all, we will make it
8 work.

9 MR. ZIMMERMAN: We have two that can attend,
10 so that is fine.

11 THE HONORABLE JUDGE FRANK: All right. The
12 next conference for here in beautiful Downtown
13 Minneapolis is Wednesday, May 17th. What is that date?
14 That is the third Wednesday in May.

15 MR. ZIMMERMAN: That is great for our side,
16 Your Honor. I see a lot of heads shaking, so that works
17 for us.

18 MR. PRATT: My daughter is graduating from
19 SMU that weekend. It really has nothing to do with
20 scheduling. I just wanted to say that so I can tell her
21 I said it at an MDL hearing. My daughter is graduating
22 from SMU that weekend.

23 (Applause.)

24 MR. PRATT: Thank you.

25 THE HONORABLE JUDGE FRANK: Which weekend is

1 it? Which weekend?

2 MR. PRATT: Well, it is on the 20th.

3 THE HONORABLE JUDGE FRANK: Well, just let me
4 say to you, Mr. Pratt, I have five daughters, two sets
5 of twins. I have three in college. So, that is why I
6 was offering to make coffee this morning to make up a
7 little change, but my oldest daughter is graduating from
8 the University of St. Thomas on May 20th, as well.
9 So --

10 (Applause.)

11 MR. LESSER: Could the record reflect the
12 applause?

13 MR. PRATT: Judge, I won't be able to go to
14 your daughter's graduation.

15 THE HONORABLE JUDGE FRANK: All right. I
16 won't be at yours, either.

17 MR. PRATT: Actually, after all of that, the
18 17th, Wednesday, though my wife has ambitious plans for
19 me, I think Wednesday the 17th is free.

20 THE HONORABLE JUDGE FRANK: We don't want to
21 interfere with the graduation. But, Mr. Price, you were
22 trying to get into the --

23 MR. PRICE: I was just going to say that the
24 record should reflect that not only was the Judge making
25 coffee, but he was selling it.

1 THE HONORABLE JUDGE FRANK: So, we will go
2 with that date. Same schedule, 8:00 to 9:15. Just keep
3 an eye on the website. It will probably be in the 15th
4 floor conference room again. And just stay tuned on the
5 courtroom because, as you know, that has moved. It will
6 be here in Minneapolis, of course.

7 One or two other issues before hearing kind
8 of an overview or summary from each respective group of
9 lawyers. As you know, I had agreed at the last hearing,
10 and actually it occurred in the afternoon, or actually
11 the late morning, over the noon hour, the motions on
12 remand. And the agreement we had to kind of move things
13 along was to get out a sentence or two or a page order
14 with a memorandum opinion to follow. That will be out
15 shortly. I define shortly as ten days or less, probably
16 less, because of some other commitments on cases I have,
17 because we have asked some folks just to stay tuned
18 until that came out. But, maybe we will have a short
19 chat today from one side of the aisle or the other about
20 the tolling issues.

21 Other than that, why don't we defer to
22 counsel unless, Judge Boylan, you had anything?

23 THE HONORABLE MAGISTRATE JUDGE BOYLAN: No.

24 THE HONORABLE JUDGE FRANK: We can start with
25 Plaintiff, if that is acceptable to everyone?

1 MR. PRATT: Sure.

2 MR. ZIMMERMAN: Thank you, Your Honor.

3 THE HONORABLE JUDGE FRANK: And the record
4 should reflect we did in fact meet this morning from
5 8:00 to 9:10, or thereabouts.

6 MR. ZIMMERMAN: I have no daughters
7 graduating from college, unfortunately, so I am not in
8 that club.

9 Your Honor, the agenda was provided to the
10 Court, I believe, on Monday and posted on the website
11 and filed. It has six items on it. I think I will make
12 my comments on number one, and the Defense can make
13 theirs and we can kind of go back and forth that way if
14 that meets with the Court's approval.

15 The first one is number and status of cases
16 transferred into the MDL. According to Plaintiffs'
17 records, there are 232. I think according to Defense,
18 there are 207. I don't know if it is necessary to go
19 into too much of the particulars on that, because they
20 do catch up here when they catch up. The bottom line is
21 there are about 220 or so cases that are going to be
22 finding their way here based upon the records of the
23 judicial panel.

24 One of those cases that is probably of
25 interest to people is the Switzer litigation in New

1 York. That is subject to a motion right now in New York
2 before the Federal Judge there as to whether or not it
3 will be brought here or not. We don't know the outcome
4 of that, but that is probably the most significant of
5 the tag-along cases.

6 Certain of these 232 cases are in suspense
7 and have tag-alongs and are subject to hold periods. I
8 don't know that that is all that important for purposes
9 of this discussion today, but what is important is that
10 everyone know that when your case comes to this Court
11 and when your case does get transferred here, there is
12 an obligation under the plaintiff fact sheet to get your
13 plaintiff fact sheets in.

14 We had a long discussion about plaintiff fact
15 sheets, and I want the record to reflect that it is the
16 PSC and the LCC, Lead Counsel Committee's point of view
17 that it is very important to get those in timely. And
18 that those that are not timely and those that are not
19 substantially complete will hear from us to do so as
20 quickly as possible. It is a very important issue for
21 the Court, it is an important issue for the Plaintiffs
22 Steering Committee and it is an important issue for the
23 Defense. So, that is the report on cases transferred to
24 the MDL. We may have a comment.

25 MR. PRATT: Good morning, Your Honor. I have

1 done sort of a recalculation of cases now because we did
2 get some decisions from the Multi-District Panel on some
3 oppositions to the Conditional Transfer Orders.
4 According to the numbers we have on the Defense side,
5 there are now 210 total cases actually here, committed
6 in the MDL. There are 42 pending transfers that are
7 part of the tag-alongs that we have filed. There are
8 five oppositions to conditional transfer orders that are
9 still pending to be considered by the Multi-District
10 Panel. One of them, as Mr. Zimmerman said, is the
11 Spitzer matter out in New York. So, that is the total
12 number of cases sort of in the MDL. 210 are sort of
13 hopefully on their way to the MDL.

14 There are a total of 27 cases in State Court,
15 presently. The Texas trials that were set for a couple
16 of weeks ago were continued. There are no new trial
17 date in the Texas cases. We have no State Court trials
18 set anywhere until August of this year.

19 So, that's where things stand. I agree with
20 Mr. Zimmerman that I think that there is discovery that
21 is proceeding to pace. There are certain things the
22 Plaintiffs' Steering Committee and Lead Counsel believe
23 to be critical. From the Defense standpoint, one of the
24 most critical aspects that we believe we need and are
25 not getting involve plaintiff fact sheets.

1 There are about 59 Plaintiffs in the MDL for
2 whom we have no fact sheets, in violation of the
3 pretrial orders that have been submitted. We are
4 talking to the Plaintiffs' Steering Committee about how
5 to deal with those deficiencies, even those that have
6 been filed and submitted in a relatively timely fashion,
7 several of those are incomplete.

8 We are debating with them over the
9 deficiencies and hope to get that information. That, on
10 the defense side, is critical information that we need
11 to be able to proceed with the Court's deadlines for
12 setting bellwether cases for trial. And we are working
13 with the Plaintiffs' Steering Committee to get it.

14 THE HONORABLE JUDGE FRANK: We won't say
15 anything more other than we had this extensive
16 discussion, and we are on schedule. And we want
17 everybody on the train, because we are not going to slow
18 it down for other Plaintiffs, since we have some dates
19 and we are going to hold to those that end up in trying
20 cases no later than March of this next year.

21 MR. ZIMMERMAN: Your Honor, the subpart of
22 that is we are in negotiations with the Defense for a
23 tolling agreement, which may slow down filings if we are
24 successful in having a tolling agreement, which would
25 allow people to not have to file cases, but get in under

1 a tolling. We have not resolved it yet. We believe we
2 are there. We have a good faith effort to negotiate,
3 and we hope to have that secured within a very short
4 period of time. So, we are reviewing documents,
5 reviewing drafts and hopefully we will report to the
6 Court pretty soon that we have reached a tolling
7 agreement.

8 Next is the status of state cases. I think
9 Mr. Pratt touched on it. The only thing I would add to
10 that is we understand there are 27 cases in the State
11 Courts, several of them in the state of Texas and
12 several in the state of Minnesota. They are scattered
13 into Ramsey County and into Hennepin County, and that is
14 basically the status of the number of cases that are in
15 State Court.

16 And at this point, there seems to be a great
17 deal of cooperation between the State Court Judges and
18 the Federal Court to limit the amount of duplicate
19 discovery that might take place in dual tracks.

20 THE HONORABLE JUDGE FRANK: And I will just
21 repeat what we said in the conference, Judge Boylan and
22 myself, not just because we are former state colleagues,
23 not just because it is done in many MDL's, not just
24 because we are actually good friends of, as it turns
25 out, the respective Chief Judges, Wieland in Hennepin,

1 Greg Johnson, Ramsey, and newly appointed Russ Anderson,
2 Chief Justice. We did say in chambers, we will be
3 reaching out to them in the next few days just to make
4 sure that, to the extent it is appropriate, to
5 coordinate, minimize duplication, so that they can carry
6 out their responsibilities. We will carry out ours.
7 Because there is some discussion by the State Court of
8 rolling all of these to one judge, whether it is out of
9 the Supreme Court order, as has been done in the past
10 and pick a judge in the state system, or each respective
11 Chief Judge in Ramsey, the Second District, or Hennepin,
12 the Fourth, that is, of course, not our decision to
13 make. But, we will reach out to those three individuals
14 in the next few days.

15 MR. ZIMMERMAN: Thank you, Your Honor. The
16 next issue, just a matter of information, is the master
17 complaint. It is not on the agenda, as such, but
18 counsel has agreed that the date which was originally
19 set for this month, earlier this month, I thought it was
20 the 13th, has been moved to the 21st. The Plaintiffs
21 will file a master complaint on the 21st with the Court,
22 which will incorporate all of the claims that we
23 understand to be before the Court. And we have
24 agreement from counsel as to that day. If there is a
25 day or two of slippage, we will advise; but, that is our

1 goal, and we think we will make it.

2 Part and parcel of that, we had a discussion
3 in chambers about if that creates any page or word
4 limitations, were briefing to have to come to all or a
5 portion of the Complaint, and we let the Court know of
6 our concern that because we're consolidating a lot of
7 different claims, we wanted to make sure that no type of
8 claim got somehow short shrift, or limited in the amount
9 of briefing or the appropriate briefing they can do,
10 giving due consideration that always shorter is better.
11 And that if you can't say it in a short way, it probably
12 isn't best to be said in some fashion.

13 We are concerned, and we expressed it to the
14 Court, that somehow filing a master complaint would in
15 no way limit people's right to brief appropriately and
16 the Court to give due consideration to those
17 limitations.

18 THE HONORABLE JUDGE FRANK: True. True or
19 false? True.

20 MR. ZIMMERMAN: True.

21 THE HONORABLE JUDGE FRANK: I don't think you
22 will be able to locate to many lawyers that find that
23 either one of us has taken an arbitrary view in any
24 context.

25 Of course, it shouldn't either be a license

1 for some unnecessary replication. I don't think there
2 will be any complaints from either side of the aisle
3 that we will handle anything other than fair. If people
4 need to be heard, they will be heard. And I think we
5 were convinced because Judge Boylan brought up the pros
6 and cons of the one, two and three master complaints.
7 And I think it's -- we are probably on board that the
8 one for the reasons you all stated, so we won't revisit
9 that, make a lot of sense. And we will be sensitive to
10 the concerns that: Well, will this open a door to the
11 Court to put in some unreasonable page limitations?
12 That won't happen.

13 MR. ZIMMERMAN: Thank you.

14 MR. PRATT: Back to the number of State Court
15 cases, I think, Your Honor, you deserve credit for
16 sending up a letter to State Court Judges and
17 encouraging them not to get sort of ahead of the MDL. I
18 know you have made some initiatives in Texas,
19 specifically.

20 There was some comment made that there are
21 cases in Texas and there are cases in Minnesota, State
22 Court cases; and that is true. But, I think it is, of
23 the 27 State Court cases, they are sort of spread around
24 in 14 different states, and the fact that they are in 14
25 different states and there is virtually no activity in

1 most of those states I think is attributed in some
2 respects to the fact that these judges are standing
3 down. They realize things are moving ahead with the
4 MDL, and I know that was one of your objectives, to be
5 sure, that State Court Judges don't get ahead. But, the
6 27 cases are spread around over 14 different states.
7 Most of them have one case in one state, like
8 California, places like that. But, it seems to be
9 working. We are getting new cases filed in Federal
10 Court, as opposed to State Court, so I think that is
11 probably a positive development for everybody.

12 THE HONORABLE JUDGE FRANK: I hope so. I
13 hope so.

14 MR. ZIMMERMAN: Tim, you mentioned under
15 plaintiff fact sheet discussion, and I guess it is at
16 the tail end of the agenda, too. You indicated there
17 were 59 deficiencies. If you could just --

18 MR. PRATT: No, 59 of --

19 MR. ZIMMERMAN: Deficiencies that --

20 MR. PRATT: For which we have received no
21 fact sheets.

22 THE HONORABLE JUDGE FRANK: 132 deficiency
23 letters, I think.

24 MR. ZIMMERMAN: But 59 who have not filed.
25 If you could just favor us with those names, we will

1 make the effort immediately to notify them and to get
2 them appropriately filed. So, give us the names of
3 those 59 as quickly as you can and we will work to make
4 sure they get filed.

5 THE HONORABLE JUDGE FRANK: If I may just --
6 not on that topic, but for those of you that weren't
7 here or haven't snooped around on the website, the
8 letter that was sent out to -- the same letter was sent
9 to every judge, but they were individually sent with
10 individual names. It wasn't just one mass letter sent
11 with every Judge's name. But, the letter that was sent
12 that Mr. Pratt referred to is on the website if you are
13 curious, well, what was the communication. It is on the
14 web.

15 Mr. Pratt, you kind of headed for the
16 microphone, so I don't know --

17 MR. PRATT: Well, the deals are five and six
18 that I think we started it, so we can end the discussion
19 with it fairly quickly if Your Honor permits. And the
20 information we have is that we have received plaintiff
21 fact sheets on 148 individual Plaintiffs, for which we
22 submitted 132 deficiency letters, because we believed
23 they were incomplete, some in small respects, many in
24 significant respects. Only about a third of those did
25 we even get medical records that accompanied the

1 plaintiff fact sheets.

2 Of the deficiency letters, the 132 we sent
3 out, to this date, 77 have not even responded to the
4 deficiency letter. Many have, in good faith they are
5 getting us more information.

6 There are 59 Plaintiffs for which plaintiff
7 fact sheets are due, and we received no fact sheet,
8 whatsoever. As I explained to Your Honor this morning,
9 our plan was to file motions to dismiss all of those 59
10 Plaintiffs on the grounds that they violated the
11 Pretrial Order, missed the deadline.

12 As we discussed matters this morning with Mr.
13 Zimmerman and other lead counsel on the Plaintiffs'
14 side, we agreed to give them a list of those missing
15 fact sheets of Plaintiffs to counsel, which we will do
16 within 24 hours. They will then see what they can do
17 about correcting that deficiency. But, in a short
18 period of time we may be compelled, if we don't get
19 them, to file a motion to dismiss. Because either the
20 Plaintiffs are in or they are out as a part of this
21 whole bellwether discussion process. But, we are, in
22 the meantime, we are going to try to work with the
23 Steering Committee to get complete fact sheets.

24 THE HONORABLE MAGISTRATE JUDGE BOYLAN: The
25 record should reflect the fact that the Court indicated

1 that in our view we thought it was very important to get
2 those fact sheets in. We are interested in getting
3 those bellwether cases identified and keeping this
4 matter on track.

5 MR. ZIMMERMAN: Thank you.

6 The next item, Your Honor, is the discovery
7 status. It really breaks down into documents and
8 depositions. With regard -- I will report on the
9 documents, and Richard Arsenault will report on the
10 depositions.

11 The document depository, Your Honor, has 3.6
12 million documents now provided by Defense to us. We
13 have a depository set up that is a total electronic
14 depository; that is, all documents can be reviewed on
15 computer screens and they can be reviewed remotely, as
16 well. In other words, you don't have to be in the
17 depository.

18 We have been reviewing documents steadily.
19 This system had a couple of little bugs coming in on the
20 first day we had people show up, we've worked those out.
21 We have what we consider a very efficient review
22 program, coding program, and hot document program. I
23 don't want to go into any greater detail, because it is
24 proprietary to the PSC, but the documents are coming in
25 fast and furious. The documents are being reviewed

1 electronically. And we have a depository up and running
2 at the Gaviidae Center in Minneapolis adjacent to our
3 offices, but not part of our office. It is a separate
4 place.

5 We are very happy with the participation of
6 Plaintiffs' counsel in the review process. And although
7 there have been a couple of delays in getting some of
8 the documents we want that are important, we have a
9 commitment, especially on the Independent Panel
10 documents that had been ordered, that the documents that
11 went to the Independent Panel that went into their
12 report entitled, "Report of the Independent Panel of
13 Guidant Corporation," dated March 20, we wanted the
14 supporting documents that went to the panel.

15 We have a commitment this morning from Mr.
16 Pratt that those will be provided to us within, I think,
17 a week or ten days. So, that is a very good and
18 important development. And documents continue to come
19 in and get reviewed.

20 We will give you the report on the
21 depositions so you know where we are and counsel around
22 the country know where we are, and then Tim you can
23 comment, or anyone from your side.

24 MR. ARSENAULT: Good morning, Your Honor, it
25 is Richard Arsenault, Lead Counsel Committee. Early on

1 we wanted to begin with corporate depositions, Rule
2 30(b)6 depositions. We identified five areas where we
3 were going to initially conduct these Rule 30(b)6
4 depositions. We did that.

5 We have now concluded three of those five
6 depositions, the first of which was the information
7 technology and document management 30(b)6 deposition,
8 and then there was a medical advisory 30(b)6 deposition,
9 and then just this week we concluded the warranties of a
10 30(b)6 deposition.

11 We are still in the process of getting dates,
12 and I think the Defendants are in the process of
13 identifying representatives who will testify in their
14 30(b)6 capacity, and that will be in the sales and
15 marketing and the communications with regulatory
16 agencies.

17 We have also identified a number of
18 individuals who will be deposed within the next,
19 hopefully, month or two. There is an engineer who is
20 being deposed, as we speak in San Francisco, a Rocco
21 Russini. There are six depositions that we are in the
22 process of identifying dates and times and logistics and
23 custodial files. And those are Dr. Beverly Laurel, she
24 is the Vice-President Chief Medical Technology Officer;
25 Michael Flanagan, a technical services person; Reynold

1 Russie, an engineer; Alan Gorsett, Vice-President of
2 Reliability and Quality Assurance; Dale DeVries,
3 Vice-President of Clinicals and Regulatory Affairs; and
4 Dan Tisch, manager of Product Performance.

5 Also, Your Honor, there has been about over a
6 dozen third-party subpoenas that have gone out to a
7 variety of nonparties. And those documents are coming
8 in with regularity. Lastly, as we begin to review more
9 of these documents, the need for depositions and the
10 need for -- the identification of those people who
11 should be deposed becomes clearer to us. And we are
12 working on a constant real-time basis to identify those
13 people consistent with the document review that is
14 taking place.

15 THE HONORABLE JUDGE FRANK: Thank you.

16 MR. ZIMMERMAN: I was just reminded of two
17 other things. One is, we also had a discussion
18 regarding the crematorium review and the downloading of
19 the information that was seized from the documents that
20 were -- the devices that were in the crematorium. We
21 have a commitment that that information will be
22 forthcoming.

23 What I am really referring to is, there are a
24 number of devices that were found to be in crematoriums
25 that were taken from people who had died, who had to

1 have the devices removed before they were cremated.
2 Those devices were subpoenaed and the information from
3 those devices downloaded by Guidant. And we now have
4 agreement that that information, the downloaded
5 information from those devices will be provided to us in
6 a very short period of time.

7 Secondly, Your Honor, I just want everyone to
8 know on the record that anyone who is a member, who has
9 a federal case and has a case in the MDL can review
10 documents in the document depository. So, we are open
11 for business and we are available for review.

12 The one issue that people need to know is
13 that some of the documents are large documents so that
14 when you open the document, it will -- say it is a color
15 PowerPoint, it takes some time to open that document if
16 you are trying to do it remotely. So, that was a little
17 bit of a problem for us to get enough pipe, enough
18 width, broadband width to be able to get those documents
19 opened quickly and reviewed.

20 We have solved that problem, but will never
21 be completely solved, because if it is a color
22 PowerPoint, it is just going to take more time than,
23 say, a black and white e-mail. But, I think that the
24 system is working very well. I, for one, am very happy
25 with it and happy that it has as few bugs in it and it

1 is operational at this time. And I think that the
2 depository is available for anyone with a federal case
3 who wants to use it. Seth, was there anything more on
4 the depository?

5 MR. LESSER: No, that is it. And Bucky
6 actually is, I think it is fair to say, almost
7 minimizing the extent that some of these documents,
8 maybe we live in an electronic age, but one has to
9 appreciate these documents were enormous, there are
10 single documents, single files one gigabyte large.
11 There are multiple documents in the tens and hundreds of
12 millions of megabytes large. Those are enormous files.

13 So, of course, as Bucky pointed out, if any
14 Plaintiffs' counsel wishes to read those documents
15 remotely, they have to appreciate and understand that
16 documents that long, given -- and with that existence at
17 least in the world today might take a few minutes to
18 load.

19 THE HONORABLE JUDGE FRANK: Mr. Pratt?

20 MR. PRATT: Well, if there is a problem of
21 too many documents being produced to the Plaintiff's
22 Steering Committee, Your Honor --

23 THE HONORABLE JUDGE FRANK: The phrase was
24 fast and furious.

25 MR. PRATT: I have got a solution and I am

1 pleased that we are at least making some inroads into
2 satisfying the insatiable appetite of my colleagues on
3 that side for information and documents.

4 Mr. Carpenter, if we may, Your Honor, will
5 comment on some of the discovery situations.

6 MR. CARPENTER: Your Honors, Plaintiffs are
7 accurate in their assessment of the current discovery
8 situation. Just one brief clarification. We are going
9 to get to the Plaintiffs the majority of the Independent
10 Panel documents within a week or ten days. The one
11 difficulty and the one caveat I do want to make is as we
12 explained earlier at our prior meeting, we are still
13 working to identify not just the documents that were
14 initially sent to the panel, we have identified those
15 and will be able to produce those within a week or so
16 but we are also trying to make sure we can identify
17 subsequently produced panel documents, as well.

18 So, what Plaintiffs will be getting in a week
19 to ten days will be most of them. And we are working as
20 fast as we can to identify the full range of any
21 additional subsequently produced to the Independent
22 Panel documents, and we will be producing those as soon
23 as we identify them.

24 THE HONORABLE JUDGE FRANK: All right.

25 MR. PRATT: One quick matter, Your Honor, and

1 I am springing it on the lead counsel, here, but it is
2 going to be a matter we need to discuss.

3 In the Texas cases, there were three senior
4 people deposed, Fred McCoy who is the president of
5 Guidant, Joe Smith, Chief Medical Officer, and Al
6 Gorsett, who is the Vice-President in charge of
7 Reliability.

8 Most of the people they have asked for by
9 name are individuals who have not been deposed. Mr.
10 Gorsett they have asked for by name. He had been
11 deposed for five hours. We are going to engage in a
12 discussion with the Plaintiffs' Steering Committee on
13 limiting the time and topics of previously deposed
14 company witnesses.

15 I don't think we can treat Mr. Gorsette as we
16 would Mr. DeVries, for example, who has not been
17 deposed, so we are going to engage some discussion with
18 them on whether they're -- perhaps they need less time
19 with the witness who has already been deposed. And
20 perhaps there are some topics that have already been
21 exhausted in the earlier deposition that need not be
22 revisited. I think in the spirit of cooperation we can
23 reach some agreement on that. If not, we may have a
24 moment of your time to discuss what we might be able to
25 do with it.

1 THE HONORABLE JUDGE FRANK: Well, and
2 actually, that was one of the issues, not those
3 particular ones addressed in that letter to State
4 Judges, because whether it is coming from their side or
5 our side on the Federal Bench, one risk is not just
6 duplicity, but deposing people prematurely when neither
7 side was vested with very much -- with the information
8 you would hope to have. So, it probably just confirms
9 that the more we can coordinate and cooperate, likely
10 everybody benefits on both sides of the aisle of this.

11 MR. PRATT: Unfortunately, I think, it is
12 only a historical problem now, because we have no State
13 Court scheduling order that is pressing us for company
14 witness depositions at that level. That may change next
15 week, but it looks like now we are on a path for these
16 company witnesses to be deposed for the first time and I
17 hope the only time in the MDL setting here, so I think
18 that is an accomplishment.

19 MR. ZIMMERMAN: And in response to what Mr.
20 Pratt said we will simply work with you on trying to
21 find appropriate and reasonable guidelines for
22 depositions of people who have been previously taken in
23 other proceedings.

24 And we will use our best efforts and exercise
25 good faith.

1 THE HONORABLE JUDGE FRANK: All right.

2 MR. ZIMMERMAN: The next item, Your Honor, is
3 bellwether representative trial planning and summary
4 jury trials. This is a key issue in this MDL, Your
5 Honor. We are meeting this afternoon, immediately
6 following this conference with counsel to discuss at
7 least the plaintiffs view of how bellwether should be
8 categorized and selected.

9 We believe we will have a meaningful
10 discussion. It is going to go from immediately
11 following this conference to about 12:30 today when
12 people have to break to hit plains. If we do not
13 resolve it by that time, we will meet again very soon.
14 If at the end of that process we cannot come to a
15 complete agreement on the process for selecting
16 bellwethers, and the categories of bellwethers or
17 instructive trials, we will immediately bring that to
18 the Court for direction and resolution of those issues.

19 It is key that we bring this process to a
20 head. It is key that we make it to agreement, rather
21 than going into any other kind of system, because it is
22 the quality of the selection process, and it is the
23 representativeness of these bellwether cases that will
24 be so helpful in us in ultimately getting to the end of
25 this litigation and resolving the important issues that

1 we confront. We are prepared to meet. They are
2 prepared to meet. If we all meet in good faith,
3 hopefully we will get it done. If we don't get it done,
4 you will hear from us and we will ask you to help us
5 bridge the gap.

6 MR. PRATT: I really have nothing much more
7 to add to that. Yes, we will meet with our proposal as
8 well. I think the Defendants have their thoughts on how
9 these bellwether matters ought to proceed we understand
10 the Court's instruction what you all expect of us as
11 counsel. I think we can make some inroads, at least,
12 into limiting the number of disputes that we have and
13 selecting the process that is as fair as it can be.
14 Also we're going to discuss getting the information we
15 need in order to participate meaningfully in the
16 selection process. That will be part of what we are
17 going to discuss today, as well.

18 THE HONORABLE JUDGE FRANK: I don't think we
19 need to repeat or respond, because we had a very, I
20 think, positive and constructive discussion this
21 morning. And I would refer, if in your idle hours or
22 minutes for those of you who haven't, our last order,
23 pretrial order number 8 that was filed and is on the web
24 on March 23rd addressed solely this issue. And the only
25 modification of that would be that to the extent that we

1 had at paragraph 3 of that order that within one week of
2 this conference that we would -- we would proceed to
3 setting and selecting the cases, I think it is
4 understood implicitly, in light of the efforts that both
5 sides are making, and we all have a meeting of the minds
6 that this is key to, one, responding to all of the
7 Plaintiffs, and maybe most importantly for keeping us on
8 track for trying cases in March of 2007. And kind of
9 the theme of the order back in March is that, yes, there
10 are some MDL's that when all else fails, they randomly
11 select cases. But, randomly selecting out of agreed
12 upon categories that are truly representative and
13 proportionately representative is one thing, as I think
14 we all agree, randomly selecting, because we can't
15 figure out another way to do it regardless of the
16 categories I don't think it will serve anyone's
17 interest. But, I think enough has probably been said.
18 I think we are on the right track.

19 And like you told the two of us this morning
20 you are going to head right into a conference when we
21 are done here to take a look at that process, so --

22 MR. ZIMMERMAN: Thank you. The next issue on
23 at agenda, Your Honor, is ADR. And we have had some
24 preliminary discussions. We have really nothing
25 definitive to report, other than it is in the air, and

1 we are looking at ideas and nothing has been agreed to
2 at this point, but we are simply having discussions as
3 to how it might work in the future.

4 Plaintiff fact sheets, I think we have beaten
5 that one to death. I think the word has gotten out that
6 it is an obligation that we must take seriously on the
7 Plaintiffs' side. And the Defendants and the Plaintiffs
8 will cooperate to make sure plaintiff fact sheets are
9 appropriately filled out, filed, and timely completed.

10 Your Honor, that completes the formal agenda,
11 unless anybody in the courtroom or anybody from the
12 Bench has any questions, that's --

13 THE HONORABLE JUDGE FRANK: Well, let's do
14 three things, and Judge Boylan may. Have others, but
15 don't get worried, now, there is not a secret category
16 down here.

17 Is there anything -- for the people that were
18 in the meeting this morning, this is just a repeat
19 question that we asked each of you. And so, I think, I
20 believe I know the answer to the question. And then I
21 will open it up to the rest of the courtroom.

22 Is there anything else that given the dates
23 we have set, the existing orders in place, that the
24 Court can do or should be doing that we haven't
25 discussed? Or do you think that, at least at this

1 time, we are moving forward? Or is there something you
2 need us to do?

3 MR. ZIMMERMAN: From the Plaintiffs'
4 perspective, I don't -- oh, there might be a conflict.

5 THE HONORABLE JUDGE FRANK: Be careful what
6 you ask for.

7 MR. ARSENAULT: This is just something Mr.
8 Pratt raised and we wanted to make certain. We have
9 noticed or are in the process of noticing Al Gorsett.
10 And we will make reasonable accommodations in certainly
11 not going through testimony in any more detail than we
12 need to, unless there has been some new documents or
13 anything like that. But, we just want to make certain
14 that we do in fact have those transcripts and all of the
15 associated exhibits. We were perhaps mistakenly under
16 the impression there might have been a fourth
17 deposition, as well, but we will get with your staff to
18 make sure that --

19 MR. PRATT: I don't think Mr. Stone was
20 deposed. I think that was the fourth. He was not.

21 MR. ARSENAULT: All right. So, we will work
22 with Mr. Pratt to make sure we have those transcripts,
23 all the exhibits and try to reach some reasonable
24 accommodation.

25 MR. ZIMMERMAN: But, other than that, in

1 answer to your question, Your Honor, no. I mean,
2 doughnuts in the morning would be nice.

3 THE HONORABLE JUDGE FRANK: All right, well,
4 we will work on that.

5 MR. ZIMMERMAN: Other than that, we felt very
6 much heard. And the pace and the coordination and the
7 supervision of the cases are working very well and we
8 are very thankful of the cooperation of both sides and
9 from the Bench.

10 THE HONORABLE JUDGE FRANK: Mr. Pratt, same
11 question.

12 MR. PRATT: The Defendants think that both of
13 you are doing a fabulous job.

14 THE HONORABLE JUDGE FRANK: Some good
15 old-fashioned schmoozing at the end of a conference --

16 MR. PRATT: You asked.

17 THE HONORABLE JUDGE FRANK: I was hoping that
18 wasn't a question, but if I may, are there any other
19 counsel that were assuming they would have a right to be
20 heard this morning and want to raise any issue? And
21 that doesn't mean -- silence does not mean everything is
22 all -- Gale, go ahead.

23 MS. PEARSON: Hi, and I don't want to raise
24 any issue, but I just have a question --

25 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Gale,

1 why don't you identify yourself for the court reporter?

2 MS. PEARSON: Thank you. My name is Gale
3 Pearson and I have cases, and State Court case in
4 Minnesota. And I was just questioning, in the Medtronic
5 cases where we have got -- we are coordinating our
6 discovery, the State Court cases are getting
7 cross-noticed in the depositions for the Medtronic
8 cases. I was just questioning whether or not the State
9 Court cases are also going to be cross-noticed in the
10 Guidant Depositions.

11 In the Medtronic cases we are working with
12 Defendant for an opportunity to be hear. I haven't
13 received any notices at this point, and I'm sure it is
14 not an issue, it is just because I haven't received any
15 notices yet.

16 In the State Court cases in Medtronic, there
17 is a discussion going on about giving an opportunity to
18 the State Court attorneys at some time during the
19 deposition process to ask question that they may feel is
20 important to their particular case. And I'm just
21 raising that as a question, just to think about. Thank
22 you.

23 Not an uncommon practice, Ms. Pearson, I
24 think we would agree, in some of these MDL's, whether it
25 is Medtronic or others. I mean, I think there is more

1 than one way to handle it. But, I think it is a fair
2 issue to raise. Anyone want to respond to it today?

3 MR. ZIMMERMAN: We will give it due
4 consideration, for sure.

5 THE HONORABLE JUDGE FRANK: All right, thank
6 you.

7 Anything further on behalf of either
8 Plaintiffs, Defendants, from the gallery or from counsel
9 table? All right. We will adjourn.

10 We thank you all for your presence and we
11 will see you soon. Thank you.

12 ALL COUNSEL: Thank you, Your Honor.

13 (Adjournment.)

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Certified by: _____

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Jeanne M. Anderson, RMR-RPR
Official Court Reporter

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